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MICHAEL RODAK,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973.

Nos. 73-434, 73-435 and 73-436

WILLIAM G. MILLIKEN, ET AL.,
Petitioners,

vs.

RONALD G. BRADLEY, ET AL.

ALLEN PARK PUBLIC SCHOOLS, ET AL.,
Petitioners,

vs.

RONALD G. BRADLEY, ET AL.

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM, ET AL.,
Petitioners,

vs.

RONALD G. BRADLEY, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF OF THE SCHOOL TOWN OF SPEEDWAY, INDIANA AND THE SCHOOL CITY OF BEECH GROVE, INDIANA, AMICI CURIAE.

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE.

The School Town of Speedway, Indiana and The School City of Beech Grove, Indiana hereby respectfully move for leave to file the attached Brief Amici Curiae in these cases. All attorneys for the parties in these appeals have been contacted and their consent requested to file such Brief. Some of such attorneys have given such consent, but movants have been unable to obtain same from all such attorneys.

The interest of The School Town of Speedway, Indiana and The School City of Beech Grove, Indiana, arises from the following facts. Both movants are school corporations created and existing under Indiana law. They own and operate school systems which serve, respectively, the civil town of Speedway and the civil city of Beech Grove, Indiana, two small communities adjacent to the City of Indianapolis.

On August 18, 1971, the United States District Court for the Southern District of Indiana, after a trial of an action brought by the United States, entered a judgment in which it found that the Indianapolis Public School System (IPS) was guilty of segregatory practices in the operation of its schools.[1] The trial court speculated in its opinion that a desegregation plan limited to IPS would not remain demographically stable and that IPS would at some future point have enrolled a higher percentage of black students than was acceptable to the district court.

Subsequently an intervening complaint was filed and nineteen school corporations and certain state officials added as defendants. Movants were among the added school corporations. Following another trial, the court entered a judgment in which it found, *inter alia*: (1) that the prior judgment against IPS was *res judicata* against the added school corporations and state officials; (2) that none of the added school corporations were guilty of segregatory practices; and (3) that all of the school corporation defendants were amenable to orders effecting student transfers between such defendants in quantities designed

1. *U. S.* v. *Bd. of School Commissioners*, 332 F. Supp. 655, aff'd., 474 F. 2d 81 (7th Cir. 1973), cert. den. 37 L. Ed. 2d 1041 (1973).

to achieve a prescribed degree of racial balance within IPS. That decision is presently on appeal to the United States Court of Appeals for the Seventh Circuit.[2] Thus, movants are involved in an action similar to the case at bar. A decision by this Court in the instant action may provide precedent for the Seventh Circuit's decision.

Both the School Town of Speedway, Indiana and The School City of Beech Grove, Indiana are independent school corporations which have territorial boundaries coterminous with the municipalities which they serve. As such entities, they have community interests distinct and separate from other types of school corporations which will be adversely affected if this Court approves the power of district courts to enter orders such as those made in the cases at bar. The distinct interests of school corporations serving towns and cities has not heretofore been argued by the parties in this appeal or considered in the Court of Appeals below, and such interests are relevant to any disposition of this appeal. Movants do not believe that the arguments made in the attached Brief will be made by any other party to these appeals.

Respectfully submitted,

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2. *United States, Plaintiff-Appellant and Donny Brurell Buckley, et al., Intervening Plaintiffs-Appellees* v. *Board of School Commissioners, et al.*, Nos. 73-1968 through 73-1984, in the Seventh Circuit Court of Appeals.

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INTEREST OF AMICI CURIAE.

The interest of The School Town of Speedway, Indiana and The School City of Beech Grove, Indiana, arises from the following facts. Both movants are school corporations created and existing under Indiana law. They own and operate school systems which serve, respectively, the civil town of Speedway and the civil city of Beech Grove, Indiana, two small communities adjacent to the City of Indianapolis.

On August 18, 1971, the United States District Court for the Southern District of Indiana, entered a judgment in which it found that the Indianapolis Public School System (IPS) was guilty of segregatory practices in the operation of its schools.[1] The trial court speculated in its opinion that a desegregation plan limited to IPS would not remain demographically stable and that IPS would at some future point have enrolled a higher percentage of black students than was acceptable to the district court.

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Court of Appeals for the Seventh Circuit.[2] Thus, movants are involved in an action similar to the case at bar. A decision by this Court in the instant action may provide precedent for the Seventh Circuit's decision.

ARGUMENT.

> *"It is not the time to try to say with final authority what the town has meant in American life. Its meanings are profound and various. But of its importance there can be no question."*[3]

One of the questions in the case at bar and in the action in which these *amici* are parties is whether a federal district court may order the busing of school students between separate, independent school corporations in order to remedy discriminatory practices found to exist in only one of such school corporations. These *amici* believe that the far reaching impact of such an order may be seen in clearer detail when viewed from the vantage point of a school corporation which serves a city or town separate and distinct from the school district in which such discriminatory practices were effected.

Throughout this country, hundreds of school corporations exist which have geographical boundaries coextensive with small towns and cities.[4] Several of such school corporations are

2. *United States, Plaintiff-Appellant and Donny Brurell Buckley, et al., Intervening Plaintiffs-Appellees* v. *Board of School Commissioners, et al.*, Nos. 73-1968 through 73-1984, in the Seventh Circuit Court of Appeals.

3. P. Smith, *As a City Upon a Hill, The Town in American History* (Alfred A. Knopf, 1966), p. 307.

4. In 1972, the U. S. Bureau of the Census reported the existence in the United States of 15,281 "independent school districts," i.e., school districts which are administratively and fiscally independent of any other government. Of this number, 597 of such districts had coterminous "citywide" boundaries. The same source reported a total of 1457 "dependent school districts" of which 247 had coterminous "citywide" boundaries. In total, there were, in 1972, 844 "citywide" systems with 8.2 million pupils. U. S. Dept. of Commerce, Bureau of the Census, Vol. 1, *Governmental Organization, 1972 Census of Governments*, pp. 3, 6, 8 and 40.

parties to these appeals. These *amici* are also school corporations which have such territorial boundaries and which serve small municipalities located in the State of Indiana.

Typical of such municipal school corporations is one of these *amici*, The School Town of Speedway. The civil town of Speedway, Indiana, which it serves, has a population of approximately 17,500. The town is governed by a board of trustees elected by the citizens of the town. The town board is empowered to control all other municipal departments and appoints their administrators. Schools which serve the community are owned and administered by an independent corporation created by statute and designated as The School Town of Speedway. The administration of that school corporation is vested in a three-man board of school trustees appointed by the civil town board of trustees on a non-partisan basis. The School Town of Speedway neither owns nor operates school buses. All schools are physically located within the town boundaries so that students have access thereto either by walking or other means of transportation provided by the students or their parents. The operational funds for the schools are provided almost entirely through taxes paid by citizens of the Town. Although this small community is geographically dwarfed by the adjacent City of Indianapolis, it encompasses large industries in which many of its citizens work. In short, it is a distinct community whose citizens take pride in local community projects and operations, and which has a municipal government and school system responsive to the local problems and needs of the community.

The rationale of state legislatures in fixing school boundaries to the boundaries of the small towns and cities which they serve is not limited to mere physical convenience:

> [I]f we except the family and the church, the basic form of social organization experienced by the vast majority of Americans up to the early decades of the 20th Century was the small town. In the words of Thorstein Veblen: "The country town is one of the great American

institutions; perhaps the greatest, in the sense that it has and had and continues to have a greater part than any other in shaping public sentiment and giving character to American culture."[5]

The real essence of a community is found in the fact that it has a center, and the beginning of a community arrives when its members have a common relation to the center.[6] It is this common relationship which gives vitality to a school system serving the small community. The importance of this common relationship becomes readily apparent when one views the chaos of many big city school systems as contrasted to the stability and quality of those found in smaller communities.

The small community, then, as many legislatures and educators have found, provides a desirable environment for implementation of a community-wide school system which can truly give consideration to such important factors as home-school communication, children attending school within the vicinity of home, minimization of transportation safety hazards, economy of cost and ease of pupil placement and administration. See opinion of Mr. Justice Powell, concurring in part and dissenting in part, *Keyes* v. *School District No. 1, Denver, Colorado*, ... U. S. ....., 37 L. Ed. 2d 548 (1973); *Deal* v. *Cincinnati Bd. of Ed.*, 369 F. 2d 55 (6th Cir. 1966), cert. den., 389 U. S. 847 (1967).

It is thus beyond argument that towns and cities provide a logical, reasonable and desirable setting for operation of independent school corporations. The essential question is whether federal courts can forcibly transfer children attending such a school system, and otherwise disregard the independent nature of such a system,[7] in order to effect a judicially prescribed degree of racial balance in a given geographical area.

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5. P. Smith, supra, pp. vii-viii.

6. Will Herberg, Ed.: *The Writings of Martin Buber* (New York: Meridian Books; 1956), p. 129.

7. In one of the district court orders entered in the case in which these *amici* were parties, the trial court has presumed the power to consolidate all of the school corporations in the Indianapolis

Absent an overt, affirmative state act which contravenes a Constitutionally protected right, federal courts have no power to circumscribe the rights of the states to establish municipalities and school corporations to serve the members of such communities. *Spencer* v. *Kugler*, 326 F. Supp. 1235 (D. N. J. 1971), aff'd. per curiam, 404 U. S. 1027 (1972); *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960); and *Hunter* v. *Pittsburgh*, 207 U. S. 161 (1907). These principles alone, in addition to this Court's rejection of the concept of "racial balance or mixing", *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1 at 24 (1971), provide sufficient authority for a reversal of the lower courts in the instant case.

In an attempt to avoid the limitations found in the above precedents and other cases, the Sixth Circuit Court of Appeals in the cases at bar apparently adopted the theory that all school corporations are agents of the state and since the state is responsible for school matters, the rights of individual school corporations could be ignored. Such a theory is flawed in many respects. These *amici* wish to only point out that if this concept is not rejected by this Court, it will allow one school corporation to be held to answer for the wrongdoings of another. In addition to the fact that guilt by association is anathema to our jurisprudence, such a novel concept would effect a fundamental deprivation of the Constitutional rights of the innocent school corporation. Long ago this Court held that private corporations created under state law for school purposes were entitled to the protection afforded by the guarantees of the United States Constitution. *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925). No reason exists for holding that public school corporations are to be treated differently.

Many other legal arguments could be discussed, but they will undoubtedly be made by the parties to these appeals. It is the

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area "along metropolitan lines". Supplemental Memorandum of Decision, entered December 6, 1973, by The U. S. District Court, Southern District of Indiana, Cause No. IP 68-C-225, Slip Opinion, p. 19.

practical and factual impact of the opinion of the Sixth Circuit in the instant case which these *amici* wish to primarily emphasize. If that opinion is allowed to stand and becomes the law of the land, judicial power in desegregation cases will know no bounds. Students will be transported from the small towns and cities in which they, their families and friends reside, into the schools of large metropolitan areas. The burden of busing for racial balance may fall upon school children who have always walked to a nearby school (as is the case with most Speedway students). Parental interest and participation in school affairs will be frustrated. Many school officials are elected by voters who reside within the territorial boundaries of the school corporation or district.[8] Small town citizens may thus experience the anomaly of being required to send their children to a school system administered by officials over whom they exercise no voting control. Every school corporation located in any degree of proximity to a large metropolitan area will become amenable to remedial racial balancing decrees, no matter how separate or independent those school corporations may be. The touchstone of judicial power will be demography, not equity.

8. This is the case for example, with respect to school officials of the Indianapolis Public School System. See *Indiana Constitution*, Art. 2, § 2; *Burns Ind. Stats.* § 28-2603. Thus in the case in which these *amici* are parties, residents of Beech Grove and Speedway cannot vote for Indianapolis school officials.

CONCLUSION.

The district courts involved in the cases with which this Brief is concerned have promulgated decrees which eventually could destroy one of the traditional fabrics of American life. Their decrees formulate a blueprint for federally constituted school systems which ignore the natural community interests of parents, teachers and children. Our nation has drawn its life from small communities, and it is itself a community of communities.[9] This Court should not affirm a court decree which would forever destroy the rights of the citizens of the towns and cities of this nation to educate their children in school corporations designed and established to serve individual communities.

Respectfully submitted,

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9. P. Smith, *supra*, p. 14.